

**ENTERED**

January 11, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

JULIAN G SILVAS, JR.,

Plaintiff,

VS.

STEPHEN A GIOVANNINI, *et al.*,

Defendants.

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CIVIL ACTION NO. 2:21-CV-00269

**ORDER**

Before the Court is Magistrate Judge Julie K. Hampton's Memorandum and Recommendation ("M&R") to dismiss Plaintiff Julian G. Silvas, Jr.'s claims brought pursuant to 42 U.S.C. § 1983. (D.E. 12). Specifically, the M&R recommends that this Court (1) dismiss Plaintiff's claims for money damages against Defendants Reyna and Gonzales in their official capacities as barred by the Eleventh Amendment; (2) dismiss without prejudice Plaintiff's claims seeking habeas relief against Defendants Reyna and Gonzales; (3) dismiss with prejudice Plaintiff's remaining claims against Defendant Giovannini and Defendants Reyna and Gonzales in their individual capacities; and (4) that this dismissal be counted as a "strike" for purposes of 28 U.S.C. § 1915(g). *Id.* Plaintiff timely filed objections to the M&R. (D.E. 14).

After having carefully reviewed the proposed findings and conclusions of the M&R, the record, the applicable law, and having made a de novo review of the portions of the

M&R to which Plaintiff's objections were directed, the Court **OVERRULES** Plaintiff's objections. (D.E. 14). Accordingly, the Court:

- (1) **ADOPTS** the M&R. (D.E. 12).
- (2) Plaintiff's claims for money damages against Defendants Reyna and Gonzales in their official capacities are **DISMISSED** as barred by the Eleventh Amendment.
- (3) Plaintiff's claims seeking habeas relief against Defendants Reyna and Gonzales are **DISMISSED without prejudice** to Plaintiff raising them in a separate federal habeas corpus action only after he has exhausted available state court remedies.
- (4) Plaintiff's remaining claims against Defendant Giovannini and Defendants Reyna and Gonzales in their individual capacities are **DISMISSED with prejudice** for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915(b)(1).
- (5) This dismissal is counted as a strike for purposes of 28 U.S.C. § 1915(g), and the Clerk of Court is **ORDERED** to send notice of this dismissal to the Manager of the Three Strikes List for the Southern District of Texas at [Three\\_Strikes@txs.uscourts.gov](mailto:Three_Strikes@txs.uscourts.gov).
- (6) The Clerk of Court is **ORDERED** to **CLOSE** this case.

A final judgment will be entered separately.

SO ORDERED.

  
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DAVID S. MORALES  
UNITED STATES DISTRICT JUDGE

Signed: Corpus Christi, Texas  
January 11<sup>th</sup>, 2022